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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RACHEL SAWYER and DUSTIN ARNOLD,

Plaintiffs,

v.

LEGACY EMANUEL HOSPITAL &
HEALTH CENTER, OREGON
DEPARTMENT OF HUMAN SERVICES
CHILD WELFARE, JAMES COUGHLIN,
M.D., SUNSHINE CRONE, CAROLINA
CABARELLO,

Defendants.

Case No. 3:18-cv-02128-SB

REPLY IN SUPPORT OF DEFENDANTS
DHS AND CABALLERO'S MOTION TO
DISMISS

Plaintiff's brief misses the point of the motion to dismiss.

First, the reason the second claim fails to state a claim for relief is that a claim for unlawful seizure can only be made by the person seized, in this case, the child. *Kirkpatrick v. County of Washoe*, 843 F.3d 784, 789-790 (9th Cir. 2016). Plaintiff's arguments are applicable to a claim brought by the parents for their own rights, such as the first claim. They do not

resuscitate the second claim. The second claim for relief should be dismissed for failure to state a claim and failure to join a necessary party.

Second, the third claim may provide support for the first claim, but it does not independently state a claim. If it is meant to state a section 1983 claim, it should say so. If it is duplicative of the first claim, it should just be dropped. Either way, ORS 419B.090(4) does not provide a basis for a free-standing claim, which plaintiffs do not deny. The third claim should be dismissed.

Third, the argument for dismissal of the State from the section 1983 claims is not affected by the removal. The Supreme Court has ruled that Congress did not intend to include states within the parameters of the statute. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Therefore, regardless of whether section 1983 claims are in state or in federal court, they cannot have the State as a defendant, absent a claim for equitable relief. *Id.* (rejecting section 1983 claim against state that was filed in state court). The State should be dismissed from the first and second claims for relief.

Fourth, again, since the third claim for relief is currently stated as a state law claim, it should not be brought against the individual defendant. Plaintiffs do not deny this conclusion, though they do argue the claim is not actually a state law claim. However, as the claim currently stands, it is a state law claim and therefore the individual defendant, Ms. Caballero, should be dismissed.

For these reasons and those stated in the State defendants' opening brief, all claims except the first one should be dismissed, and the State should be dismissed from even the first claim.

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Respectfully submitted,

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